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In re Application of:	:	
GARDNER, Timothy, et al.	:	DECISION ON PETITION UNDER
U.S. Application No.: 10/506,734	:	37 CFR 1.47(a)
PCT No.: PCT/US03/06491	:	
International Filing Date: 05 March 2003	:	
Priority Date: 06 March 2002	:	
Attorney's Docket No.: 2004647-0011	:	
For: SYSTEMS AND METHODS FOR	:	
REVERSE ENGINEERING MODELS	:	
OF BIOLOGICAL NETWORKS	:	

This decision is issued in response to applicants' "Petition Under 37 CFR 1.47(a)" filed 31 October 2005. Deposit Account No. 03-1721 will be charged the required petition fee.

BACKGROUND

On 05 March 2003, applicants filed international application PCT/US03/06491 which claimed a priority date of 06 March 2002 and which designated the United States. The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 06 September 2004.

On 03 September 2004, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 28 March 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirement (Form PCT/DO/EO/905) indicating that an executed declaration in compliance with 37 CFR 1.497 was required.

On 31 October 2005, applicants filed a response to the Notification Of Missing Requirements (with required five month extension fee). The submission includes the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the application without the signature of inventor, Jesper TEGNER, whom applicants argue has refused to execute the application.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the nonsigning inventor; (3) an oath or declaration executed by the other inventors on behalf of themselves and the nonsigning inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here have authorized a charge to deposit account number 03-1721 for the required petition fee, and the petition expressly states the last known address of the nonsigning inventor. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, the petition refers only to the failure to obtain the signature of joint inventor Jesper TEGNER, implying that the signatures of the other inventors have been obtained. However, applicants have not included a declaration executed by the cooperating inventors (and containing an unsigned signature block for the nonsigning inventor). No declaration has been submitted at all. Accordingly, item (3) is not satisfied.

Regarding item (4), the petition refers to efforts made to obtain Dr. TEGNER's signature, including a mailing of the declaration to the inventor's last known address, two follow-up emails, and unsuccessful attempts to reach the inventor at a recently obtained telephone number.

The present record is insufficient to support the conclusion that the inventor has refused to sign the application or cannot be located after diligent effort. Pursuant to MPEP section 409.03(d), before it can be concluded that an applicant refuses to sign the application papers, firsthand evidence must be provided confirming that a copy of the complete application (including specification drawings and claims) has been provided to the last known address of the inventor. Applicant here has not provided such evidence. As noted above, applicant only claims to have mailed a copy of the declaration to the inventor, not the complete application. Moreover, no evidence of receipt by the inventor at this address has been provided (i.e., a signed return receipt). The failure of an inventor to respond to a single mailing, receipt of which has not been confirmed, is not considered a constructive refusal to sign the application. The evidence here is also insufficient to demonstrate that the inventor cannot be located after diligent effort (for example, no evidence has been provided to demonstrate that the last known address of the inventor is no longer current, and applicants have provided evidence that a new telephone number for the inventor was obtained only two days before the petition was mailed).

Before item (4) can be considered satisfied, applicants must provide further evidence that demonstrates either: (1) that the complete application papers have been delivered to the nonsigning inventor, and he has refused to execute the application papers; or (2) proper evidence that the inventor cannot be located after diligent effort. Such materials must be in the form required under section 409.03(d) of the MPEP.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the materials required to satisfy items (3) and (4) of a grantable petition, as discussed above. No additional petition fee is required.

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a)

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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